

Appl. No. 10/655,833
Atty. Docket No. CM2694
Amdt. Dated 01/19/2006
Reply to Office Action of 10/21/2005
Customer No. 27752

REMARKS/ARGUMENTS

Claims 1-2 and 8-20 are currently being considered. Claims 3-6 have been canceled without prejudice. Claim 1 is being amended to include the limitations of Claim 7. Claim 7 is being canceled without prejudice. No new claims are being added.

Applicants' Reply to the Drawing Requirement

Applicants respectfully submit that drawings are not required. 37 CFR § 1.81(a) states that the applicant is only required to furnish a drawing "where necessary for the understanding of the subject matter sought to be patented." Applicants submit that a drawing is not necessary to understand the subject matter to be patented. Applicants respectfully point out that the instant Final Office Action contains a rejection based on Assignee's own prior art that also does not include any drawings. This means that at least two application, the instant application and GB 2,369,094, were understood and interpreted without the use of drawings. It is also worth noting that the US equivalent of GB 2,369,094 U.S. Pub No. 2002/0123444, does not contain any drawings either.

Moreover, the Final Office Action does not provide any basis for why a drawing is necessary. The Final Office Action contains the blanket statement "The drawings must show every feature of the invention in the claims". This is not a reason for including drawings, rather it is what drawings, when present, should include. In light of the fact that the instant application and GB 2,369,094, were understood and interpreted without the use of drawings, Applicants have been given no reasons as to why drawings would be needed for the understanding of the subject matter sought to be patented. Applicants respectfully request that for at least these reasons, the requirement of drawings should be withdrawn.

Rejections Under 35 U.S.C. § 102

a) GB 2,369,094

Claims 1-6, 9, 11-16 and 19 stand rejected under 35 U.S.C. § 102 (b) over GB 2,369,094 (hereafter Procter) for reasons of record at pages 3 and 4 of the Office Action. Claims 3-6 have been canceled thereby rendering the rejection of these claims moot.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

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For a claim to be anticipated under 35 U.S.C. § 102(b) all of the elements of that claim must be found in the prior art reference, in this instance Procter. However, a review of present Claims 1-2, and 9 will clearly show this is not the case, as not all elements of Claims 1-2, and 9 are found in Bertolino. Claim 1, and consequently dependent Claims 2 and 9, have been amended to include the limitations of canceled Claim 7, namely "wherein the means for avoiding or minimizing rupture comprises a cushioning material selected from polyethylene foam and corrugated cardboard and combinations thereof". There is simply no disclosure of this claim element in Procter. This is reflected in the fact that in the instant Final Office Action Claim 7 was never rejected as being anticipated in view of Procter. Since Procter fails to teach all the elements of amended Claim 1, and consequently dependent Claims 2 and 9, it does not anticipate the pending claims and therefore it is respectfully requested that this rejection be withdrawn with respect to these claims.

As to Claims 11-16 and 19, Applicants also respectfully submit that Procter does not show Applicants' feature of an outer container for containing a plurality of liquid-filled pouches in a random orientation, as recited in claims 11-20. However, the pouches in Procter, by the simple fact that they are all attached to a single sheet cannot ever truly be contained randomly (i.e., piled in immediate proximity to one another and not prevented from touching each other) in the package. The sheet linking the different pouches in Procter constrains the possible arrangements of the pouches relative to one another, i.e. it can never be a random arrangement. Since Procter fails to teach all the elements of Claims 1-2, 9, 11-16 and 19, it does not anticipate the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

b) GB 2,369,094 in view of Dull

Claims 7-8, 10, 17-18 and 20 stand rejected under 35 U.S.C. § 102 (b) over GB 2,369,094 (hereafter Procter) in view of U.S. Pat No. 5,645,169 (hereafter Dull) for reasons of record at pages 4 and 5 of the Office Action. Claim 7 has been canceled thereby rendering the rejection of this claim moot.

Applicants respectfully traverse this rejection to the extent it may apply to the claims as now amended.

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Applicants are puzzled by this rejection. The statutory basis given for this rejection is 35 U.S.C. § 102 (b) and the rejection does state the claims as being anticipated. However, the rejection includes two references and MPEP 2131.01 lists only three circumstances where more than one reference can be used in an anticipation rejection. None of these limited circumstances appear to apply to the instant situation. Furthermore, at two occasions in the rejection the statement is made that the claims "would be obvious to one of ordinary skill in the art". This seems to imply that the rejection is an 103 rejection and not a 102 rejection. Alternatively, it could be a combined 102/103 rejection. Clarification on exactly what the rejection is, is respectfully requested.

In any event Claims 7-8, 10, 17-18 and 20 are not anticipated by nor obvious in view of Procter alone or in combination with Dull as they fail to disclose all the elements of these claims.

Applicants also respectfully submit that neither Procter alone or in view of Dull shows Applicants' feature of an outer container for containing a plurality of liquid-filled pouches in a random orientation, as recited in claims 11-20. In particular, applicants' liquid-filled pouches may be "piled in immediate proximity to one another, and are not prevented from touching each other by packaging material" (see applicants' specification, page 3, line 36-page 4, line 2). As discussed in the Office Action and above, Dull, the bags are only enclosed in the compartments of a bag transport package. They are not contained randomly (i.e., piled in immediate proximity to one another and not prevented from touching each other) in the package. Similarly, in Procter the pouches can never be randomly arranged.

As to Claim 7, the limitations of which have been incorporated in to Claim 1, and Claim 17 the Final Office Action points to the cushioning outer sleeve (30) in Figure 3 of Dull. However, this is a mischaracterization of what 30 is. In actuality, 30 is an outer sleeve "for the convenience of the user", and not for cushioning. See Dull Column 3, lines 66-67. The outer sleeves sole purpose is to help a user carry the gel transport package and has nothing to do with minimizing rupture of the packaged product. There is no disclosure, teaching, and/or suggestion in Dull of a "means for avoiding or minimizing

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rupture comprising a cushioning material selected from polyethylene foam and corrugated cardboard”.

Applicants further respectfully submit that the Office Action has failed to state a *prima facie* case for the obviousness rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. See *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the “burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.” *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967).

Clearly there is no motivation for one of ordinary skill to combine Procter with Dull. Procter is related to pouches which are all attached a to a single sheet, where as Dull is to individual pouches which are isolated one from another. See Figures 8, 9 and 13 of Dull. Dull teaches separation of each of the pouches, whereas Procter teaches the opposite, i.e. linking them together. One of ordinary skill has no motivation to consider two such totally different teachings.

In any event the combination of Procter and Dull fail to teach or suggest or provide motivation to one of ordinary skill a packaged product containing a plurality of liquid-filled pouches in a random orientation. In particular, Applicants' liquid-filled pouches may be "piled in immediate proximity to one another, and are not prevented from touching each other by packaging material" (see applicants' specification, page 3, line 36- page 4, line 2). As discussed in the Final Office Action and above, Dull, the bags are only enclosed in the compartments of a bag transport package. They are not contained randomly (i.e., piled in immediate proximity to one another and not prevented from touching each other) in the package. Similarly, in Procter the pouches can never be randomly arranged.

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Applicants respectfully request that for at least these reasons, the rejection of the independent claims under 35 U.S.C. §102(b) as being anticipated by Procter in view of Dull should be withdrawn. The dependent claims are allowable at least because the independent claims are allowable. Furthermore, since Procter in view of Dull fails to teach, disclose or suggest all the elements of Claims 7-8, 10, 17-18 and 20, it does not make obvious the pending claims and therefore it is respectfully requested that this rejection be withdrawn.

CONCLUSION

Applicants have made an earnest effort to place their application in proper form and to distinguish their invention from the applied prior art.

WHEREFORE, Applicants respectfully request entry of the amendments presented, reconsideration of the application, and withdrawal of the rejections under 35 U.S.C. §102 and allowance of Claims 1-2 and 8-20.

Respectfully Submitted,

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